IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4548 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

C J JOSEPH,

Versus

DIGVIJAY CEMENT CO. LTD.

Appearance:

MR JOY MATHEW for Petitioner

MS PARUL PATEL FOR MR BG JANI for Respondent No. 1

MR.VM PANCHOLI, APP.for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 05/09/2000

ORAL JUDGEMENT

#. Rule. Ms.Parul Patel, learned Advocate for Mr.B.J.Jani, learned Advocate appears and waives service

of notice of rule on behalf of respondent no.1 and Mr.V.M.Pancholi, learned APP. appears and waives service of notice of rule on behalf of respondent no.2 - State.

#. By means of filing this petition under sections 407 and 482 of the Code of Criminal Procedure, the petitioner seeks transfer of Criminal Cases No.1258 of 2000 and 2718 of 2000 filed by the respondent no.1 against the petitioner in the Courts of learned Judicial Magistrates, First Class, 4th. & 6th. Court at Jamnagar, respectively to the 9th. Court of lerned Metropolitan Magistrate, Ahmedabad for the reasons stated therein.

#. It may be stated that respondent no.1 herein has filed two complaints against the petitioner for the commission of the offence under section 138 of Negotiable Instruments Act, for dishonour of cheques issued by the petitioner in the Courts of learned Judicial Magistrates, First Class, Jamnagar to which reference is made in earlier para of this judgment. It is averred by the petitioner that respondent no.1, has also filed two complaints before the 9th. Court of learned Metropolitan Magistrate, Ahmedabad bearing Criminal Case Nos. 2987 of 2000 and 2991 of 2000 against the petitioner for commission of the similar offence relating to dishonour of two different cheques. It is also averred that respondent no.1 is a company corporated duly registered under the Indian Companies Act,1956, and has its Head Office at Ahmedabad. The respondent no.1 company sells its products in the market in the name of "Kamal Brand Cement" and has got various branches in many parts of the country.

#. The petitioner is a dealer of iron steel and cement, asbestos etc. and has also got the business of building materials and engaged in the trading of cement in the State of Kerala. The petitioner has been doing the business with the respondent no.1 company for last several years. It is the say of the petitioner that he is a resident of Kerala and doing business in Kerala for the last several years. For attending the Court at Ahmedabad, the petitioner has to travel 2000 kms. from Kerala to arrive at Ahmedabad and if he has to attend the Court at Jamnagar he has to further travel 300 kms. more from Ahmedabad to Jamnagar. It is, therefore, urged by the petitioner that in the interest of justice, it is desirable that all the four cases are tried by the same Court since the parties as also the witnesses in all the four cases are also same. The petitioner, therefore, seeks transfer of both the aforementioned cases filed by

respondent no.1 against the petitioner pending in the Courts of learned Judicial Magistrates, First Class, Jamnagar to the 9th. Court of learned Metropolitan Magistrate, Ahmedabad.

#. Though the affidavit-in-reply has not been filed by respondent no.1, the petition is contested by making oral submissions.

#. Having heard Mr.Joy Mathew, learned Advocate for the petitioner, Ms.Parul Patel, learned Advocate for respondent No.1 and Mr.V.M.Pancholi,learned APP. for respondent no.2 and on having perused the averments made in the petition it appears that there were four separate transactions and for the same four separate cheques were issued by the petitioner herein infavour of respondent no.1. Therefore, the respondent no.1 has filed four separate complaints. Two complaints were filed before the Court of learned Judiclia Magistrate, First Class, Jamnagar whereas two complaints were filed before the learned Metropolitan Magistrate, 9th. Court, Ahmedabad. There is also no manner of doubt that respondent no.1 has its Head Office at Ahmedabad whereas the factory is situated in Jamnagar district and all the accounts are also maintained at Jamnagar. Therefore, it is obvious that so far as the territorial jurisdiction of filing the complaint is concerned the respondent no.1 can select and choose the territorial jurisdiction. Thus, the respondent no.1 can file the complaint either at Jamnagar or Ahmedabad.

#. So far as the averment made in the petition is concerned, the petitioner is resident of Kerala and therefore, he has to travel 2000 kms. from Kerala to Ahmedabad for attending the proceedings pending in the Court of learned Metropolitan Magistrate, 9th.Court, Ahmedabad and for attending the Courts at Jamnagar he has to further travel 300 kms. more. Therefore, on the ground of conveniency Mr.Mathew, learned Advocate for the petitioner prays that since the parties are the same and the respondent no.1's office is also located at Ahmedabade, the said two cases pending in 4th. & 6th.Courts of learned Judicial Magistrates, First Class, Jamnagar may also be transferred to the Court of learned Metropolitan Magistrate, 9th.Court, Ahmedabad.

#. In support of the aforesaid contention, Mr.Mathew, learned Advocate for the petitioner relies on the decision of the Apex Court in the case of M/s.Ayyannar Agencies Vs. Sri Vishnu Cement Ltd.

reported in 2000 CRI L.J.2472. In the said case transfer petition came to be filed on the ground that five complaints alleging dishonour of cheques were filed in the Court at Chennai and another complaint was filed in the Court at Hyderabad. The petitioner sought transfer of complaint filed at Hyderabad to the Court at Chennai since the parties in all the cases were same. The offence of cheque dishonour was also of the same nature though sprouted from different cheques. Therefore, in the interest of justice and also for convenience of conducting the trial, the Apex Court had directed to transfer the complaint filed at Hyderabad to the Court at Chennai.

#. Applying the principle enunciated by the Supreme Court, if we examine the present petition, then there is also no manner of doubt that the facts are identical. In the instant case also the complaints came to be lodged for commission of the offence under section 138 of the Negotiable Instruments Act. Four separate complaints were filed by respondent no.1 out of which, two complaints were filed in 4th. & 6th. Courts of learned Judicial Magistrates, First Class, Jamnagar and two complaints were filed in the Court of learned Metropolitan Magistrate, 9th. Court, Ahmedabad.

##. In view of the aforesaid facts and circumstances of the case, I am of the opinion that, it would be advantagious to parties to have all the cases before the same Court and for convenience of conducting the trial two complaints filed and pending in the 4th. & 6th. Courts of learned Judicial Magistrates, First Class, Jamnagar are required to be transferred to the Court of learned Metropolitan Magistrate, 9th.Court, Ahmedabad.

##. For the foregoing reasons, the petition succeeds and is accordingly allowed. Criminal Case No.1258 of 2000 filed and pending in the 4th.Court of learned Judicial Magistrate, First Class, Jamnagar and Criminal Case No. 2718 of 2000 filed and pending in the 6th Court of learned Judicial Magistrate, First Class, Jamnagar are ordered to be withdrawn from the aforesaid Courts and directed to be transferred in the Court of learned Metropolitan Magistrate, 9th. Court, Ahmedabad. Rule made absolute.

--

m.m.bhatt